IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

CRP.No. 508 of 2007

OS.364/2001 of 2nd ADDL.SUB COURT,THRISSUR
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REVN. PETITIONER/IST RESPONDENT/2ND JUDGEMENT DEBTOR:

K.P.RADHAKRISHNAN NAIR,
S/O.GOVINDAN NAIR, KOZHIKKARA HOUSE,
GURUVAYUR DESOM, VILLAGE, CHAVAKKAD TALUK.

BY ADV. SRI.K.N.PADMAKUMAR.

RESPONDENT/PETITIONER/DECREE HOLDER:

ATHIRA FINANCE (P) LTD., REPRESENTED
BY ITS MANAGING DIRECTOR, K.T.RADHAKRISHNAN,
S/O.SAVITHRI BRAHMANI AMMA, AMBADI NIVAS,
GURUVAYUR DESOM, VILLAGE, CHAVAKKAD TALUK.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/06/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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CRP No.508 OF 2007

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Dated this the 6th day of June 2007

O R D ER

The second judgment debtor in E.P.No.616 of 2005 is the revision petitioner before this court. The suit is one for realisation of amount. It is contended by the petitioner that he is only a surety whereas the principal judgment debtor is a very affluent person and the decree holder in order to harass this revision petitioner is proceeding against him. It is the contention of the decree holder that the present revision petitioner is conducting two shops in Sathram building at Guruvayur and he is having a substantial income of Rs.25,000/- per month from his business and that he is willfully refusing to pay the amount and therefore he must be arrested.

2. On the contra, the petitioner would contend that he is aged 72 years and he has closed down the business and there is no income for him and therefore he should not be arrested. The factum that the present petitioner was conducting a shop is not disputed. But the question is whether he had closed down the shop or not. Learned counsel for the petitioner submits that the burden is on the decree holder to prove the means

of the judgment debtor and when the judgment debtor contends that he has closed down the shop, it is for the decree holder to establish it is not so. The factum of the conduct of a shop is admitted in this case by the petitioner. Learned counsel submits that he would establish before the court below that he has closed down the shop and he has no income from the business and therefore he is not liable to be arrested.

3. Under such circumstances, it is only just and equitable to give one opportunity to the present petitioner to prove that he has closed down his business and he has no income from the business. Therefore the order of arrest issued against the present revision petitioner is set aside and the matter is remitted back to the executing court for fresh disposal after affording an opportunity to the revision petitioner to establish that he has closed down the shop and he is not having any income from the said business. Since only an opportunity is given I am not issuing notice to the other side. The court below is directed to give a notice regarding the date of posting to the decree holder.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-